Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 27th May, 2004 (Jyaistha 6, 1926)

SERIES II No. 9

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-5-2003 in reference No. IT/61/2001, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 23rd June, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/61/2001

Shri Avinash Yeshwant Naik,
H. No. 210, Carmibhat,
Merces-Goa. ... Workman/Party I

V/s

M/s. Gomantak Printing
Press P. Ltd.,
Industrial Estate,
Corlim, Tiswadi Goa. ... Employer/Party II

Workman/Party-I - Represented by Adv. Shri A. Kundaikar.

Employer/Party-II - Represented by Adv. Shri P. A. Kamat.

Dated: 13-5-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14-12-2001 bearing No. 28/1/2001--LAB referred the following dispute for adjudication of this Tribunal.

(1) Whether the action of the management of M/s. Gomantak Printing Press, Corlim, Tiswadi, Goa in terminating the services of Shri Avinash Yeshwant Naik, Operator, with effect from 15-10-1996, is legal and justified ?

(2) It not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/61/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/ /Party-I (for short "workman") filed his statement of claim at Exb.-4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/ /Party-II (for short, "employer") as a Operator. That he was deputed at Corlim to work as a Operator on Colour Machine on a salary of Rs. 4500/- p.m. That on 9-6-99 he went to the office of the employer at St. Inez to collect his salary and at that time he was verbally informed that his services are no more required and therefore his services stood terminated with immediate effect. That he requested for termination letter and his legal dues but the employer refused to do so. That at the time of termination of his services he was not given any notice nor he was given any notice pay. The workman contended that the termination of his servites is in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 and the said termination is illegal, malafide and unjustified. The workman claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. -6. The employer stated that the reference made by the Government is not maintainable and this Tribunal has no jurisdiction to decide the reference. The employer denied that the services of the workman were terminated in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 or that the termination is illegal, malafide or unjustified. The employer denied that the workman is entitled to reinstatement in service with full back wages. The workman thereafter filed rejoinder at Exb. -7.

4. On the pleadings of the parties issues were framed at Exb.-8 and thereafter the case was fixed for the evidence of the workman. However before the evidence was recorded the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 9-5-03 at 10.30 a.m. for filing the terms of settlement. On the said date the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 9-5-2003 at Exb.-9. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and their respective Advocates and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 9-5-2003 Exb.-9.

ORDER

1. The Party-II agrees to pay to Mr. Avinash Naik (Party-I) an amount of Rs. 20,000/- (Rupees twenty thousand only) in full and final settlement of all his claims against the Party-II and the said amount is paid to the Party-I by Demand Draft No. 001943 dated 2-4-2003 drawn on the Goa Urban Co-operative Bank which Party I hereby acknowledge.

2. The Party-I declares that he has no claim whatsoever against Party-II and his claim stands settled fully.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7-7-2003 in reference No. IT/97/98, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 17th July, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/97/98

Shri Joe D'Souza,
House No. 117, Dias Waddo,
Cavelossim, Goa. ... Workman/Party I

V/s

M/s. Four Seasons Resort,
The Leela Beach,
Mobor,
Cavelossim Goa. ... Employer/Party II

Workman/Party I - Represented by Shri V. Sawant.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 7-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29-9-1998 bearing No. IRM/CON/SG/ /(32-A)/98/11033 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s. Four Seasons Resort, The Leela Beach, Mobor, Cavelossim, Goa, in dismissing from services Shri Joe D'Souza, Sr. Welder, with effect from 16-6-1998, is legal and justified ?

(2) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/97/98 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/ /Party-I (for short "workman") filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with The Leela Beach, subsequently known as Four Seasons Resort i.e.,

the Employer/Party II (for short, "employer") as General Tradesman vide appointment letter dated 1-6-1991 and his appointing authority was the Commercial Director of the Employer Company. That he was issued a show cause notice dated 11-11-96 by the employer alleging certain acts of misconducts like instigating workers, using abusive language etc. That the said show cause notice was not prepared and signed by the competent authority as per the service rules and therefore the enquiry held against him is illegal, unjustified, improper and invalid. That the said show cause notice was served on him after the working hours and he had not refused to accept the same. That pending the issue of charge sheet and holding enquiry, he was suspended by the employer vide suspension order dated 11-11-96 which is not signed and issued by the competent authority as per the service rules thereby making the enquiry illegal, unjustified, improper, invalid and vitiated. That he replied to the show cause notice denying the changes but subsequently he was chargesheeted vide letter dated 23-12-96. That the charge-sheet issued to him is not signed by the competent authority thereby making enquiry illegal, unjustified, improper, invalid and vitiated. That during the suspension period, he was not paid subsistence allowance from 11-11-96 to 15-7-98 as per the service rules and therefore the enquiry was vitiated. That the enquiry Officer did not conduct the enquiry as per the principles of natural justice and he was not given fair and proper opportunity to defend himself in the enquiry. That the findings of the Inquiry Officer dated 30-4-98 are bias and perverse and they are not based on the proceedings of the enquiry. That none of the charges mentioned in the chargesheet dated 23-12-96 have been proved in the enquiry and no prudent person will come to the conclusion on the basis of the said proceedings that the charges have been proved. That he was issued a pre-dismissal show cause notice dated 2-5-98 by the employer asking him to show cause why he should not be dismissed from service. That the said show cause notice is not issued and signed by the competent authority. That he replied to the said show cause notice by letter dated 23-5-98 bringing to the notice of the employer that the charges have not proved against him and as such he should not be dismissed from service. That the said dismissal order is not issued and signed by the competent authority and hence, the dismissal is improper, invalid and bad in law. That by letter dated 20-6-98 he requested the employer to withdraw the dismissal order because he was not guilty of the charges levelled against him and his dismissal was by way of victimisation, unfair labour practice besides malafided. That since the employer refused to withdraw the dismissal order, he raised a dispute before the Dy. Labour Commissioner, Margao, which was admitted in conciliation and subsequently failure report dated 9-9-98 was made by the Dy. Labour Commissioner. The workman contended that his dismissal from service is illegal and unjustified and therefore, he is entitled to reinstatement in service with full back wages and continuity in services.

3. The employer filed written statement denying the contention made by the workman in the statement of claim. The employer stated that the workman joined the service as General Tradesman on 1-6-1991 and at the time of his dismissal, he was working as Sr. Welder and the said category does not exist today. The employer stated that as certain series of grave allegations were received against the workman, he was issued a show cause notice dated 11-11-96 which he refused to accept and did not give any reply and thereafter he was suspended pending enquiry by letter dated 11-11-96. The employer stated that subsequently chargesheet was issued to the workman dated 23-12-96 and the workman participated in the enquiry held against him. The employer stated that after completing the enquiry, the Inquiry Officer submitted his findings dated 30-4-98 holding that the charges levelled against the workman are proved and the competent authority after going through the enquiry proceedings and the findings of the Inquiry Officer issued a show cause notice dated 2-5-1998 to the workman calling for his explanation as to why he should not be dismissed from service and he was given a copy of the findings of the Inquiry Officer along with the said show cause notice. That the employer stated that on receipt of the explanation dated 23-5-98 from the workman and after considering the said explanation and taking into account the gravity of misconduct as also the other factors, the employer decided to dismiss the workman and accordingly, he was dismissed from service by letter dated 15-7-98. The employer stated that the enquiry which was held against the workman was fair, legal and proper and he was given full opportunity to defend himself in the enquiry. The employer stated that the General Manager was the competent authority to take all the action including the disciplinary action as per the service rules applicable to the workman. The employer denied that the show cause notice was served on the workman after working hours and that the workman did not refuse to accept the same. The employer denied that the suspension order dated 11-11-96 was not issued and signed by the competent authority or that the charge-sheet was not issued and signed by the competent authority or that the enquiry held against him is illegal, unjustified, improper, invalid or vitiated. The employer denied that the subsistence allowance was not paid to the workman as per the service rules or that the findings of the Inquiry Officer are perverse and not based on the proceedings of the enquiry. The employer denied that none of the five charges mentioned in the charge sheet were proved in the enquiry. The employer denied that the pre-dismissal show cause notice or the dismissal order is not signed or issued by the competent authority

or that the dismissal of the workman is malafide, illegal, unjustified or by way of victimisation and unfair labour practice. The employer stated that the dismissal of the workman from service is legal and justified and therefore the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties following issues were framed:

1. Whether the Party I proves that the enquiry held against him is not legal, fair and proper ?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence.
3. Whether the Party I proves that the action of the Party II in dismissing him from service w.e.f. 16-6-98 is illegal and unjustified ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

5. The issue Nos. 1 and 2 were tried as preliminary issues as the issue No.1 was relating to the fairness of the enquiry conducted against the workman and the issue No. 2 was relating to the proving of charges of misconduct against the workman. The parties led evidence on the said preliminary issues and thereafter this Tribunal by findings dated 3-1-2001 held that the enquiry conducted against the workman is legal, fair and proper and that he is guilty of the charges which are misconduct under clause 21 (ii), (xi), (xii), (xxv) and (xliv) of the service rules of the employer. The issue No. 1 was therefore answered in the negative and the issue No. 2 in the affirmative. Thus the issue Nos. 1 and 2 stood disposed off . My findings on the remaining issues namely the issue Nos. 3, 4 and 5 are as follows:

Issue No. 3: In the affirmative.

Issue No. 4: As per para. 15 below.

Issue No. 5: As per order below.

REASONS

6. *Issue No. 3:* The workman was dismissed from service by the employer after the Inquiry officer had given findings that the charges of misconduct were proved against the workman and the management after considering the said findings and the past service records of the employer came to the conclusion that the workman deserved the punishment of dismissal from service and accordingly the workman was dismissed from service vide order dated 16-6-98. The workman has challenged the dismissal order on the ground that it is illegal and unjustified. The workman as well as the employer have led evidence on this issue. The workman has examined himself whereas the employer has examined its Corporate General Manager (Pers. And Admn.) Mr. Moses Samuel.

7. Shri V. Sawant representing the workman has admitted that the show cause notice dated 2-5-98 issued to the workman has been signed by Mr. Dieter Janssen, the Regional Vice President/General Manager who was not competent to sign the same as per the service rule 23(vii) of the employer. He has submitted that the dismissal order dated 16-6-98 issued to the workman is also illegal because it is not signed by the competent authority. He has submitted that the said dismissal order is signed by Mr. Dieter Janssen, as the Regional Vice President/General Manager who is not the competent authority to sign the said order. He has submitted that the workman's appointing authority was the Commercial Director as per rule 7 of the Service rules of the employer and as such the dismissal order ought to have been signed only by the Commercial Director. He has submitted that the service rules do not confer punishing powers on the Regional Vice President/General Manager either expressly or implidely. He has submitted that even if it is presumed that the punishing powers are delegated to the Regional Vice President/General Manager still he cannot dismiss the workman as he is subordinate to the appointing authority of the workman. In support of his this submission Mr. Sawant has relied upon the judgment of the Punjab and Hariyana High Court in the case of Bank of India v/s Central Government Industrial Tribunal-cum-Labour Court reported in 1991 LLR 497; the judgment of the Supreme Court in the case of Hindustan Brown Boveri Ltd., v/s their workmen reportd in 1968 I LLJ 571; judgment of the Delhi High Court in the case of Ramesh Chand v/s Union of India reported in 2000 I CLR 315; the judgment of the Andhra Pradesh High Court in the case of South Central Railway Employees Co-op. Credit Society v/s Labour Court reported in 1983 I LLJ 489; the judgment of the Supreme Court in the case of Steel Authority of India, Successor of Bokaro Steel Limited v/s Presiding Officer Labour Court at Bokaro Steel City, Dhanbad and another reported in 1980 SCC (L&S) 475; the judgment of the Delhi High Court in the case of Ajay Kumar v/s Indian Railway Construction Co. Ltd., reported in 1994 II LLJ 182; the judgment of the Madhya Pradesh High Court in case of Chhatrapal Singh Thakur v/s Asst. Commissioner of Coalmines Provident Fund and Two others reported in 2001 LLR 687; the judgment of the Allahabad High Court in the case of Kanhaiya Lal v/s District Inspectors of School, Barcilly reported in 1991 Lab. IC 2478.

Adv. M. S. Bandodkar, the learned Advocate for the employer has submitted on the other hand that the objections which have been taken by the workman regarding the competency of the General Manager to

sign the charge sheet, to issue the show cause notice, and to pass the dismissal order, were taken by him earlier at the time of deciding the preliminary issues and this Tribunal has dealt with the said objections while giving its findings on the preliminary issues. He has submitted that this Tribunal has in its findings dated 3-1-2001 has already held that the General Manager has all the powers to issue chargesheet, show cause notice and pass the dismissal order. He has submitted that the judgments relied upon the workman are not relevant to the present case as the said judgments are in relation to the Government Organisations covered under Civil Service Rules. He has submitted that the workman in his cross examination has admitted that the service rules of the employer are applicable to him. He has submitted that the workman in his cross examination has admitted that the General Manager is a person who is managing the establishment and that Mr. Dieter Janssen was one of the General Managers. He has submitted that after the definition of employer, establishment, General Manager, Management given in the service rules vis-a--vis the above admission of the workman in his cross examination it is clear that the General Manager is the only appropriate authority to take disciplinary action against the workman.

8. The workman has challenged the show cause notice dated 2-5-98 as well as the dismissal order dated 16-6-98 issued to him on the ground that Mr. Dieter Janseen, The Regional Vice President & General Manager was not competent to sign the said show cause notice and the dismissal order. His contention is that the he was appointed by the Commercial Director and hence his services could be terminated by the Commercial Director only, by way of punishment. The above submissions have been made by the workman in the course of arguments. The workman has examined himself but nowhere in his evidence he has stated as to who is the competent authority according to him who could issue the show cause notice and the chargesheet to him. He has simply stated in his evidence that the show cause notice and the chargesheet is not issued by the competent authority as per the service rules. Shri Sawant representing the workman relied upon various judgments of the Supreme Court and the High Courts on the issue of the competent authority to issue the dismissal order. I have gone through the said judgments. In the case of Hindustan Brown Boveri Ltd., (supra) the Supreme Court has held that the Standing Orders of the company vested the powers of dismissal in the company and not in any of its other authorities, and therefore in the absence of delegation it is the company and not the Works Manager who could exercise the power of punishment under the Standing Orders. In the case of South Central Railway Employees Co-op. Credit Society (supra) the Delhi High Court held that the punishing authority was the Managing Committee and since there was no delegation of power to the Secretary by the employer, the Secretary had no authority to issue charge-sheet and appoint the Inquiry Officer. In the case of Steel Authority of India (supra) held that the charge-sheet served and the enquiry committee constituted by the Chief Medical Officer of the Company was unauthorised because under the Company's Discipline and Appeal Rules, the Personnel Manager being the disciplinary authority alone could frame charges and constitute enquiry committee and there was no approved rule authorising any other head of the department. In the case of Indian Railways Construction Co. Ltd., (supra) the Delhi High Court held that the petitioner was appointed by the General Manager and the dismissal order was passed by the Deputy General Manager on whom no power was conferred to make appointment and take disciplinary action. The High Court therefore held that the order of dismissal cannot be sustained as it is made by the authority inferior to the appointing authority. In the case of Chatrapal Singh Thakur (supra) the petitioner was appointed by Coal Mines Provident Fund Commissioner whereas his services were terminated by Coal Mines Provident Fund Asst. Commissioner to whom powers were delegated subsequent to the appointment of the petitioner. The Madhya Pradesh High Court held that the petitioner being a member of Civil Service of the Union protection of Article 311 of the Constitution of India was available to him and therefore his services could not be terminated by the authority subordinate to the authority which appointed him. In the case of Kanhaiya Lal (supra) the Allahabad High Court held that the Regulation made under U.P. Intermediate Education Act, 1921 vested the power of termination in the management committee and in the absence of any express provision in the Act or Regulation authorising delegation of power to terminate, the order passed by the Manager terminating services of the petitioner was illegal. In the case of Bank of India (supra) the Punjab and Hariyana High Court has held that it is well settled that an authority subordinate to the appointing authority cannot terminate the services of an employee.

9. The judgments above referred to therefore lay down the law that normally the services of an employee are liable to be terminated by the authority who appointed him and his services cannot be terminated by an authority subordinate to the appointing authority. However, powers to terminate services can be delegated expressly or the service rules or the standing orders may confer disciplinary powers on any authority and in that event the said disciplinary authority would be competent to punish the employee by terminating his services or otherwise. In the present case the employer has its own service rules. These service rules are on record as Exb. E-4. These service rules are not disputed by the workman. Rule 23 of the Service Rules provides for various kinds of punishment which can be imposed on the workman if he is found guilty of misconduct. This rule does not specifically mention the authority who can impose the punishment of dismissal from service. However, Rule 19 of the service rules deals with termination of employment. Rule 19 (ix) lays down that an order of termination of service shall be in writing and shall be signed by the Manager, Director, or General

Manager or other person so authorised by the management and shall be supplied to the employee concerned. Therefore Rule 19 (ix) of the service rules empowers the Manager, Director, General Manager, or any other person authorised by the management to terminate the services of an employee. In the present case the workman has produced the order dated 16th June, 1998 at Exb. W-5 whereby he is dismissed from service. By this order the services of the workman are terminated. The said order is signed by the Regional Vice President and General Manager, Mr. Dieter Janssen. The workman in his cross examination has admitted that Mr. Dieter Janssen was the Regional Vice president and General Manager. As per Rule 19(ix) of the Service Rules the General Manager is competent to sign the order of termination of service. The workman has not disputed that these service rules were in force at the time when the workman was dismissed from service. This being the case there is no substance in the contention of the workman that his dismissal order is not passed by the Competent authority. In view of what is discussed above, Mr. Dieter Janssen, the Regional Vice President and General Manager was authorised under the service rules to sign the dismissal order. Therefore I hold that the order of dismissal from service passed against the workman is legal and valid since the General Manager, Mr. Dieter Janssen had the authority to issue termination order, obviously he had also the authority to issue show cause notice dated 2-5-98 before issuing the termination/dismissal order. I, therefore hold that the show cause notice dated 2-5-98 Exb. W-3 issued to the workman by the General Manager Mr. Dieter Janssen is legal and valid.

10. Now the question is whether the employer is justified in dismissing the workman from service. The misconducts which have been held to be proved against the workman are that of instigating and canvassing the workers not to accept the invitation cards and coupons which were distributed for celebration on staff day on 7-11-96 thereby causing two hours delay and uncertainty about the celebration of staff day and refusing to accept the show cause notice dated 11-11-96 to him. Adv. Shri Bandodkar, representing the employer has submitted that the charges proved against the workman are of serious nature an his conduct was of attempting to paralyse the normal conduct of the business of the employer. He has submitted that the act on the part of the workman is of riotous disorderly and improper behaviour on the premises of the establishment and is an act subversive of discipline on the premises of the establishment. He has submitted that the workman has used improper and indecent language and gave threat of assault or attempted to assault the Personnel Manager. He has submitted that in the above circumstances the employer was justified in dismissing the workman from service and this Tribunal should not interfere with the decision of the employer. In support of his above contentions he has relied upon the judgments of the Bombay High Court in the case of (1) Hawaldar Singh v/s Taigrania Metal & Steel Industries and others, reported in 2000 II CLR 452 (2) Textile Corporation of Marathwada v/s Prabhakar Balajirao Deshpande & Others reported in 1997 II LLJ 466, (3) Life Insurance Corporation of India v/s Tukaram Ganpat Marathe & others reported in 1999 I CLR 697; the judgment of the Supreme Court in the case of Mahendra Nissan Allwyns Limited v/s M.P. Siddappa & Others reported in 2000 I LLJ 424; the Judgment of the Andhra Pradesh High Court in the case of T. Narayan v/s Managing Director, M/s. Praga Tools Limited, Secunderabad, reported in 2000 II CLR 989; the judgment of the Allahabad High Court in the case of Triveni Structural Ltd., Allahabad v/s State of Uttar Pradesh reported in 1997 (2) LLN 1066; and the judgment of the Rajasthan High Court in the case of Veer Pal Singh v/s Union of India reported in 1997 (1) LLN 503.

Shri V. Sawant representing the workman has submitted on the other hand that the charges proved against the workman are not of grave and serious nature. He has submitted that the past service records of the workman were excellent and there is nothing on record to show that any memos were issued to the workman or that any disciplinary action was taken against him. He has submitted that therefore the employer was not justified in dismissing the workman from service.

11. With the introduction of Sec. 11 A to the Industrial Disputes Act, 1947 powers have been now conferred on the Industrial Tribunal to interfere with the punishment awarded by the employer and instead award lesser punishment in the facts and circumstances of the case. The said Section empowers the Tribunal to set aside the order of dismissal or discharge and direct reinstatement or award lesser punishment in lieu of dismissal or discharge even in the cases where domestic enquiry is held to be valid and proper and the findings given by the Inquiry Officer are accepted. In the case of Ramakant Misra v/s State of Uttar Pradesh & Others reported in 1983 SCC (L & S)26, the Supreme Court held that the Labour Court or the Tribunal has jurisdiction and power under Sec. 11A of the Industrial Disputes Act to substitute its measure of punishment in place of that Awarded by the employer once it is satisfied that the order of dismissal or discharge was not justified in the facts and circumstances of the case. It is therefore now well settled that the Tribunal has jurisdiction and powers to find out for itself whether the punishment awarded by the employer is justified in the facts and circumstances of the case and if not award lesser punishment. This Tribunal therefore has to find out whether the punishment of dismissal from service is absolutely disproportionate to the misconducts held to be proved against the workman. The contention of Adv. Shri Bandodkar, representing the employer is that the misconducts committed by the workman are of grave and serious nature and the punishment of dismissal from service is justified so as to maintain discipline in the establishment. He has relied upon various judgments mentioned earlier. In the case of Hawaldar Singh (supra) the Petitioner had indulged into abusing his superiors

in filthy language and had also threatened them with assault if they were to come out from their office. The Hon'ble Bombay High Court held that the conduct or the behaviour of the petitioner was a serious one and no reasonable man would tolerate such an abusive language or threat. The High Court held that the employer was justified in dismissing the Petitioner from service. In my view this Judgment of the Bombay High Court cannot be applied to the present case as in this case the workman has not been held guilty of abusing his superiors in filthy language nor he has been held guilty of threatening his superiors with assault. The misconducts held to be proved against the workman are of totally different nature and they cannot be compared or equated with the misconduct involved in the case before the Hon'ble Bombay High Court. In the case of Textile Corporation of Marathawada (supra) the operator Shri Deshpande refused to run the plant with the help of substitute worker Shri Waghmare on the ground that said Shri Waghmare was not an experienced helper. The Hon'ble Bombay High Court held that Shri Deshpande had refused to obey a lawful and reasonable order issued to him which amounted to grave misconduct. Due to non compliance with the order the plant had remained idle from 7 a.m. to 4 p.m., thereby causing substantial loss to the petitioner company. In the circumstances, the Hon'ble High Court held that the dismissal of Shri Deshpande was justified. This judgment of the Hon'ble Bombay High Court is also not applicable to the present case as in the present case the workman was not charged for disobeying the orders of the superiors nor any loss was caused to the employer on account of any act on the part of the workman. The workman had refused to accept the show cause notice issued to him which is a totally different kind of misconduct than the one in the case before the Hon'ble Bombay High Court. In the case of Life Insurance Corporation of India (supra) the employee had disobeyed the instructions of sending the stationery to the Prabhavi branch office; he had left the place of work with tools and he was found nearby to the office of the Divisional Manager and he had used hot words to him; he had picked up quarrel with another worker who was attending to the work which was supposed to be done by him and he assaulted the said worker while holding a saw in his hand and in the process the shirt of the said worker was torn and they both started quarrelling in unruling manner in raised voices. In view of the above misconducts that the Hon'ble High Court held that the dismissal of the Operator Shri Deshpande was justified. In the case of Mahendra Nissam Allwyns Ltd., (supra) the misconduct that was proved was that of leading workmen from factory disregarding challenged by Security guard; entering the room of the Deputy General Manager and Manager (Personnel) and abusing them in filthy language and threatening them and misbehaving with 5 Executives of the Company. The Supreme Court held that the charges proved against the workman were of serious nature and hence worthy of dismissal. In the case of Praga Tools Ltd., (supra) the Andhra Pradesh High Court has held that the High Court or the Tribunal has no powers to substitute their own discretion on the other authority unless it is found in a given case that the penalty imposed by the authority shocked to the conscience of the Court. In the case of Triveni Structural Ltd., (supra) the employee had held the collar of the Managing Director of the Company, dragged him from his chair and physically assaulted him and had also instigated other employees and kept the Managing Director and other officers under confinement (gherao) till police came and rescued them. The Allahabad High Court held that it was a shocking case of indiscipline and grave misbehaviour and such a person cannot be reinstated in service. In the case of Uttar Pradesh State Textile Corporation Spinning Mills (supra) when the employee was told to do his work he picked up an iron rod, stood in the office and abused the Engineer. On the same day when the Asst. Engineer was sitting in his office the employee came there and started beating him with steel rod resulting into injuries on his hands and fingers. The Allahabad High Court held that the charges proved are so serious that the punishment of dismissal was the only correct punishment and hence Tribunal was wrong in interfering with the punishment. In the case of Veer Pal Singh (supra) the police constable had used filthy language and tried to assault Asst. Sub. Inspector and he was found guilty of the said charges. Earlier also the police constable was found guilty of the similar charges. The Rajasthan High Court held that no case was made out for interfering with the punishment of dismissal from service. Almost all the above judgments relied upon by Adv. Shri Bandodkar show that the employee was found guilty of the charges of abusing the superiors with filthy language, assaulting or attempting to assault his superior, refusing to comply with the lawful and reasonable order of his superior thereby resulting into loss to the company, disobeying the orders of his superior, quarrelling with the worker and assaulting him, entering the office of his superior and abusing him with filthy language and assaulting him etc. All the above charges obviously are grave and serious charges and therefore it was held that the dismissal from service was justified. What follows from the above judgments is that whether the punishment awarded is disproportionate or not will depend upon the facts and circumstances in each case and it will also depend upon the gravity of the misconduct and the past service record of the concerned employee.

12. In the present case the charges which are held to be proved against the workman are that of instigating and canvassing the workers not to accept the invitation cards and coupons which were being distributed for celebration of the Staff day on 7-11-96. This had resulted into two hours delay and uncertainty about the celebration of the staff day. The above acts on the part of the workman did not disrupt the functioning of the hotel. There is no evidence to this effect. The entire incident was related to the celebration of the staff day on 7-11-96. On account of the instigation and canvassing the workers by the workman not to accept the invitation cards there was delay in distribution of the cards and

there was uncertainty about the celebration of the staff day on 7-11-96. This is the charge made by the employer in the charge sheet. There is no charge that the functioning of the hotel was affected or disrupted or that loss was caused to the employer because of the said act on the part of the workman. No evidence has been brought on record in this respect by the employer. It has come in evidence that the workman was instigating and canvassing the workers not to accept the invitation cards because the employer was not meeting the demands of the workers for 20% bonus and some other demands. Therefore the workman had resorted to the above act to protest against the attitude of the management of not settling the demands of the workers. Of course the approach of the workman was wrong. There was an union of the workers in the establishment of the employer, and hence the said union was the right body to take up the matter with the management. The act committed by the workman is certainly an act subversive of discipline and good behaviour. To maintain discipline such act cannot be tolerated. The other charge against the workman is that he refused to accept the show cause notice dated 11-11-96 tendered to him on 11-11-96. This show cause notice was issued to the workman prior to the issuing of the charge sheet. The workman has admitted that he did not accept the show cause notice on 11-11-96. He has tried to give the explanation for not accepting the show cause notice on 11-11-96, being that it was not explained to him in Konkani by Mr. Batta though he had made a request in that respect. In the cross examination of the workman it has been suggested to him that the show cause notice was explained to him in Konkani. This suggestion lends support to the contention of the workman that he had made a request to Mr. Batta to explain the contents of the show cause notice to him in Konkani. The ground set up by the workman for refusing to accept the show cause notice may not be a valid ground but he has tried to explain his act. However, the said show cause notice was accepted by the workman immediately on the next date that is, 12-11-96. There is no dispute on this. The dismissal order dated 16-9-98 has been produced at Exb. W-5. This order does not refer to any past service record of the workman. No evidence whatsoever has been produced by the employer to show that the past service record of the workman was not good. In the absence of any evidence from the employer and much so when the employer had the opportunity to lead evidence on the past conduct of the workman, the only reasonable inference which can be drawn is that the past conduct/ /service record of the workman was unblemished and good. Therefore considering all the above aspects and more particularly the circumstances under which the misconduct was committed by the workman, I am of the view that the punishment of dismissal from service awarded to the workman is too severe and it is disproportionate to the misconduct involved. I do not find any justification for awarding the extreme penalty of dismissing the workman from service. Ends of justice would have met if the punishment lesser than the dismissal from service was awarded to the workman. I, therefore hold that the action of the employer of dismissing the workman from service is not legal and justified in the facts and circumstances of the case. Hence, I answer the issue No. 3 in the affirmative.

13. *Issue No. 4:* This issue pertains to the relief to be granted to the workman. It has been held by me that the action of the employer of dismissing the workman from service is not legal and justified. The employer has contended that the workman cannot be reinstated in service because the post of senior welder which the workman was holding at the time of his dismissal from service has been abolished in the settlement dated 25-11-99 signed between the management and the Union. The employer has examined its Human Resources Manager, Mr. Nagraj Batta. He has stated that earlier the employer was known as Leela Beach and now it is known as M/s. Four Seasons Resort. He has stated that the workers are the members of the Union known as Leela Beach Employees Union, and that the said Union has signed many settlements with the management. He has produced the settlement dated 7-1-93 at Exb. E-5 signed between the union and the management on charter of demands. The employer's other witness Mr. Moses Samuel, working as Corporate General Manager (Pers. Adm.) has also produced the settlements dated 9-4-96 and 25-11-99 at Exb. E-11 and E-13 respectively. He has stated that the said settlements were signed in conciliation proceedings under Sec. 12(3) read with Sec. 18(3) of the Industrial Disputes Act, 1947. There is annexure "A" to both these settlements, showing the classification of workers, their grades, time scales, and designation. The witness Shri Moses Samuel has stated that in the settlements dated 9-4-96 and 25-11-99 certain categories of workers were dropped/abolished. He has produced a chart at Exb. 14 prepared by him based on the said settlements showing the categories of workers which were dropped/abolished under the said settlements. He has stated that after signing the settlement in the year 1996 the workers were informed by letters about the grades in which they were placed and the revision in their salary. He has produced the copy of the letter dated 1-5-1996 at Exb. E-16 sent to the workman. He has stated that the workman was the member of the union and he had received benefits under the settlement dated 9-4-96 Exb. E.11. He has stated that the workman was holding the post of senior welder at the time when his services were terminated and the said post was abolished as per the settlement signed in the year 1999. In cross examination Shri Moses Samuel denied that the post of welder and senior welder were permanent posts and that they could not have been abolished. He stated that the said posts had become redundant and hence were abolished because they were required only during project stage. He stated that at the time when services of the workman were terminated, he was the only person who was working as a welder and there was no other post of welder when he was dismissed from service. He denied the suggestion that at the time when the services of the workman were terminated, 15 workers and 4 senior welders were

working with the employer. He denied the suggestion that there is no Annexure "A" to the settlement of the year 1999.

14. The workman in his cross examination has admitted that he was the member of Leela Beach Employees Union. He has admitted that he had received the letter dated 1-5-1996 Exb. E-7 from the employer informing him about the settlement dated 9th April, 1996 and consequently placing him in Grade V alongwith the revised break up of his salary. The workman in the cross examination of the employer's witness has not denied the statement made by the said witness in his chief that the workman had received the benefits under the settlement dated 1-5-1996. Therefore since the workman was the member of Leela Beach Employees Union and he had been receiving the benefits under the settlement signed between the management and the said Union, the settlements were binding on the workman. The Annexure "A" to the settlement dated 1-5-1996 Exb. E-11 shows that the post of the senior welder was placed in Grade V. The workman has not thrown any challenge to this settlement. He has not disputed that he was not placed in Grade V. Now it is the case of the employer that another settlement was signed on 25-11-99 which is produced at Exb. E-13. This settlement is signed between the management and the Union of which the workman was the member. The workman in the cross examination of the witness Mr. Moses Samuel has simply denied that there is Annexure "A" to the said settlement. There is no substance in this contention of the workman. In the first place the workman has not denied that the said settlement is signed between the management and union. In other words, the said settlement is not disputed by the workman. What is disputed is the Annexure "A" to the said settlement. I have gone through the said settlement. It is signed under Sec. 12(3) read with Sec. 18(3) of the Industrial Disputes Act, 1947 before the Dy. Labour Commissioner. Clause 1 of the said settlement refers to Annexure "A" regarding classification of grades and revised pay scales. Annexure "A" bears the signature of the Dy. Labour Commissioner and of the Union representative Mr. Fermano Viegas, besides the rubber stamp of the office of the Dy. Labour Commissioner, South Goa. Therefore there cannot be any doubt regarding the existence of Annexure "A" to the settlement dated 25-11-99. This Annexure "A" mentions the classification of workers, their grade and pay scales. It does not mention the post of welder in Grade IV or the post of Sr. Welder in Grade V. These posts were shown in Annexure "A" to the earlier settlement dated 9-4-1996. It therefore lends support to the contention of the employer that in the settlement dated 25-11-99 Exb. E-13, the post of the welder and Sr. Welder were abolished. The employer has stated that there was only one post of Sr. Welder. The workman has contended that at the time when his services were terminated, 15 welders and 4 senior welders were working with the employer. However no evidence whatsoever has been produced by the workman to substantiate his above contention. He could have examined any worker or any office bearer of the union in support of his above contention. Also no evidence whatsoever has been brought on record by the workman to prove that subsequent to his dismissal from service, the employer employed another Sr. Welder in his place or that any other Sr. Welder is working with the employer even after his dismissal from service. In the circumstances the contention of the employer that post of the Sr. Welder which the workman was holding at the time of his dismissal from service, has been abolished is liable to be believed and accepted. This being the case the question of ordering reinstatement of workman in service does not arise. However it does not mean that the workman cannot be granted any relief.

15. The employer has produced a chart at Exb. E-14 showing the types of the posts which were abolished in the year 1996 and in the year 1999. As per the said chart the post of Sr. Welder was abolished in the year 1999. The employer has not produced evidence to show from which date the said post of Sr. Welder was abolished. However, the Annexure "A" to the settlement dated 25-11-99 Exb. E-13 shows that the said post is not in existence. Therefore it is to be assumed that the said post is not in existence or is abolished from 25-11-99, that is the date on which the settlement is signed. This being the case since the workman cannot be reinstated, it is to be considered as if the services of the workman are retrenched from 25-11-99 in view of the abolition of the post of the Sr. Welder. As such, the workman is liable to be paid retrenchment compensation, and the gratuity on the basis that his services are retrenched from 25-11-99. The workman will be also entitled to gratuity under the Payment of Gratuity Act since he had put in more than 5 years of service and as such the provisions of Payment of Gratuity Act, 1972 applied to him. Since the workman has been held guilty of misconduct some punishment is liable to be imposed on him. Considering all the aspects discussed by me above and the circumstances under which the workman committed the misconduct, I am of the view that it would be just and proper to award 70% of the back wages from the date of his dismissal from service till 25-11-1999 being the date from which the post of Sr. Welder was abolished by the employer, by way of punishment. I, therefore set aside the order of the employer dated 16-6-1998 dismissing the workman from service and I hold that the workman is entitled to 70% of his back wages from the date of his dismissal from service till 25-11-1999 besides the retrenchment compensation, gratuity and other legal dues if any.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Four Seasons Resorts, The Leela Beach, Mobor,

Cavelossim, Goa, in dismissing the workman Shri Joe D'Souza, Sr. Welder, with effect from 16-6-98 is not legal and justified. The management of M/s. Four Seasons Resorts, The Leela Beach, is ordered to pay to the workman Shri Joe D'Souza, 70% of his back wages from the date of his dismissal from service till 25-11-1999 and the retrenchment compensation, gratuity and other legal dues if any.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 1-7-2003 in reference No. IT/53/89 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 17th July, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/53/89

Shri Ramdas Borkar,
Rep. by Goa Shipyard Workers Union,
H. No. 222, Orulem,
Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s. Goa Shipyard Ltd.,
Vasco-da-Gama, Goa. ... Employer/Party II

Workman/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 1-7-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 17th August, 1989 bearing No. 28/ /28/85-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Goa Shipyard Limited, in terminating the services of their workman Shri Ramdas Borkar, with effect from 16-2-1984, is legal and justified ?

It not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/53/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/ /Party-I (for short "workman") filed its statement of claim at Exb. 2. The case of the workman is that in the year 1960 i.e. prior to the liberation of Goa, he was employed with the Shipyard known as M/s. Stalir Novas Goa. After liberation of Goa, the said Shipyard was taken over by Mazgaon Dock and the services of the workman were taken over by the said Dock. In the year 1965 the Mazgaon Dock was taken over by the Employer/Party-II, namely Goa Shipyard Limited, (for short, "employer") and the services of the workman were taken over by the employer. Initially the workman was employed as a labourer and subsequently, gradually he was promoted from one grade to another. At the time when services of the workman were terminated in the year 1984 he was working as a "gas cutter" in the highly skilled grade. In the year 1962 the workers of the employer unionised themselves and they became the members of CITU. In or about the year 1978 the workers formed an union known as Goa Shipyard Employees Union of which the workman was also the member and he was holding the post of Vice President. However, in the year 1982 the workman along with some other workers resigned from the said union because they were not happy with the functioning of the said union and subsequently in December, 1982 they formed an union known as Goa Shipyard Workers Union which was registered with the Registrar of Trade Unions. The workman was elected as the Vice President of the said union and the employer was informed about the formation of the said union. Thus, since December, 1982 two union started functioning in the establishment of the employer, namely, Goa Shipyard Employees Union (For short, "employees' union") and Goa Shipyard Workers Union (for short, "workers union"). The relation between the employees union and the workers union were strained because the workers union had highlighted the failures on the part of the employees union to take up the grievances of the workmen with the management and also because the accounts were not submitted to the members. On 26-2-83 at about 7.30 a.m. the workman reported for duty at the repairs division and heading hand sent him for gas cutting job at the outer jetty. At about 8:10 a.m. the office bearers of the employees union along with the other workers came to the place where the workman was working and they were led by Mr. Puti Gaonkar, the General Secretary of the said union. Mr. Puti Gaonkar lifted the workman by his shirt and asked him whether he wanted the union which was led by Shri George Vaz. Thereafter he along with other workers namely Shri John Menezes, Shri B. Gauns, Shri Rosario

Pereira and Shri Jerome Fernandes started assaulting the workman with first blows and kicks. As a result of assault the workman fell out unconsciously and when he regained consciousness he found that he was in the employer's dispensary. After first aid was given to the workman the doctor at the dispensary advised the workman to be taken to the Government hospital at Chicalim and accordingly he was taken to the said hospital in the employer's vehicle accompanied by some workmen. At the time when the workman was at the dispensary the other workmen namely shri Shantaram Kamat, Shri Anthony Dias, Shri Baby James and Shri R. K. James were also being treated there as they were also assaulted by Shri Puti Gaonkar and his gang. These workmen were assaulted because they had resigned from employees union and that they placed an active role in the formation of workers union. At the Chicalim hospital, the doctor refused to treat the injured persons including the workman on the ground that it was a criminal case. Thereafter the Vasco police were called and after the statement of the injured workmen were recorded they were treated by the doctor. The doctor advised that the workman should be taken to the Hospicio hospital for taking X-Ray of the skull and for giving other medical treatment. On 28-2-83 the workman lodged a complaint with the employer regarding the incident on 26-2-83. The workers union as well as the other workmen who were assaulted also lodged a complaint with the employer. The complaints were also filed with the Police and based on the said complaints the Police filed criminal cases against Mr. P. Gaonkar and others for having assaulted the workman and the other workers on 26-2-83. The employer issued charge sheets to 11 workers including Mr. P. Goankar. Mr. John Menezes on learning that charge sheet is issued to him, lodged a false complaint with the employer that the workman had assaulted him on 26-2-83. On the basis of this complaint the employer issued a charge sheet to the workman and to the other workers namely Anthony Dias, Gurmit Singh and Baby James. Inquiries were held into the said charge sheets. The Inquiry Officer dismissed the charges as against Baby James and Gurmit Singh but held the workman and Mr. Anthony Dias guilty of the charges of misconduct. As regards the enquiry held against Shri P. Gaonkar and some other workmen the Inquiry Officer held them guilty of misconduct for assaulting the workman and others. On receipt of the findings from the Inquiry Officer the employer terminated the services of the workman and but of Shri Anthony Dias w.e.f. 16-2-84 but did not dismiss the other 11 workmen from service who were the members of employees union though they were found guilty of misconduct. The workman contended that the findings of the Inquiry Officer are perverse and they are not based on evidence on record and that termination of his service is by way of victimization for union activities. The workman contended that the punishment of dismissal awarded to him is discriminatory, unjust and disproportionate. The workman claimed that he is entitled to reinstatement in service with full back wages because termination of his service is illegal and unjustified.

3. The employer filed written statement at Exb. 3. The employer denied that the workman was employed with M/s Stalir Novas Goa as a labourer in the year 1960 or that his services were taken over by Mazgaon Dock after the liberation of Goa in the year 1961. The employer stated that the workman was initially employed with Mazgaon Dock w.e.f. 17-9-62 on temporary basis and w.e.f. 29-9-67 the name of Mazgaon Dock changed to Goa Shipyard Limited. The employer admitted that initially the workman was employed as a labourer and subsequently he was promoted from one grade to another and he was confirmed in service from 1-1-1966. The employer denied that from the year 1966 or 1967 the workman was promoted as gas cutter in semi-skilled low grade. The employer however admitted that at the time of termination of service the workman was working as gas cutter in highly skilled grade. The employer stated that the employees union was functioning smoothly and the workers had no grievances whatsoever. The employer stated that one outside union wanted an entry into the yard and therefore the office bearers of the said union with the help of some workers of the employer formed an union known as Goa Shipyard Workers Union. The employer stated that the workers union was a minority union and therefore the employer did not recognize it as a result of which the office bearers of the said union started violent activities in the yard. The employer denied that the workers union was formed because the workers were unhappy with the employees union or with the employer or that because their grievances were not redressed effectively. The employer admitted that on 26-2-83 the workman reported for work at 7.30 a.m. at the repairs division along with Baby James, Anthony Dias, Gurmit Singh and that he was sent for gas cutting job at the outer jetty. The employer stated that the workman and the above said workers gheraoed Mr. John Menezes near the machinery shop while he was proceeding towards jetty for his job and at that time the workman gave two punches on him and Anthony Dias gave two slaps on his face. The employer admitted that a complaint dated 28-2-83 was lodged by the workman with the employer about the incident of assault on him on 26-2-83 by Mr. P. Gaonkar & others and that a complaint was also lodged by Shri Baby James, Shri Shantaram Kamat, Shri Anthony dias and Shri Avinash Agarvadekar with the employer. The employer admitted the charge sheets were issued to the workman and to Mr. Anthony Dias, Shri Gurmit Singh and Shri Baby James based on the complaints filed by Shri John Menezes but denied that the same complaint was false one. The employer stated the separate inquiries were held against the workers who were issued charge sheets and they were given all the opportunities to defend themselves in the enquiry. The employer stated that the services of the workman and Shri Anthony Dias were terminated upon receipt of the findings of the Inquiry Officer and after considering their past service records. The employer denied that the 11 workers who were the members of the employees union had assaulted the workman and others on 26-2-83. The employer stated that the charges levelled against some workers were not proved in the enquiry and the employer took action against the

workers depending upon the seriousness of the offences and the past service records. The employer stated that the matter of enquiry was challenged by the workman in the approval application No. IT/7/84 filed by the employer before this Tribunal and this Tribunal by order dated 25-9-95 held that the enquiry was conducted in a fair and proper manner and subsequently the action of the employer was also proved and hence the issue of fairness of enquiry is barred by the principles of resjudicata. The employer denied that the punishment imposed upon the workman is unjust, discriminatory or disproportionate as alleged by the workman. The employer denied that the findings of the Inquiry Officer are perverse or are not based on evidence on record. The employer contended that its action in terminating the services of the workman is legal and justified and hence the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Whether a fair, proper and impartial enquiry was held against Party I/Workman as regards the incident of assault dated 26-2-83 ?
2. Whether the workman fully participated in the D.E. and was given full opportunity to defend himself in the D.E. ?
3. Whether the management acted in a fair manner by relying on the report and findings of the enquiry officer ?
4. If so, whether the action of the management in terminating the services of Party I/Workman based on the report of the Inquiry Officer is just and proper in the circumstances of the case ?
5. Whether the above action of the management was approved by this Tribunal in IT/7/84 as contemplated u/s 33(2)(b)of the Industrial Disputes Act ?
6. Whether the finding given in regard to the fairness and legality of the domestic enquiry in IT/7/84 operates as res-judicate ?
7. If this reference is held tenable of inspite of the findings in IT/7/84 dated 25-9-1984, whether the action of the management in terminating the services of Ramdas Borkar is just and legal in the circumstances of the case ?
8. If not, what reliefs if any, is the workman entitled to in this Government reference ?

5. After the issues were framed the employer filed an application dated 18-5-90 at Exb. 6 stating that this Tribunal in approval application case No. IT/7/84 by order dated 25-9-84 has already decided that domestic enquiry held against the workman is fair and proper and it is in compliance with the principles of natural justice and though the workman who was a party to the proceedings did not challenge the said order the employer contended that therefore the order dated 25-9-84 passed in case No. IT/7/84 operated as res-judicata as far as the issues touching the domestic enquiry were concerned. This Tribunal thereafter by order dated 19-8-92 held that the findings given in regard to the fairness and legality of the domestic enquiry in case No. IT/7/84 operated as res-judicata and therefore answered the issue No. 6 in the affirmative. This Tribunal by the said order also held that the workman is debarred from re-agitating his grievances in regard to the fairness of the domestic enquiry. In view of the above order the issue Nos. 1 and 2 which were relating to the fairness of the domestic enquiry and the participation of the workman fully in the domestic enquiry also stood disposed off being barred by the principles analogous to res-judicata. Thereafter the workman led evidence on the other remaining issues but the employer did not lead any evidence. This Tribunal passed an award dated 20-10-97 holding that the misconducts alleged against the workman were proved and that the action of the employer in terminating the services of the workman w.e.f. 16-2-84 is legal and justified.

6. The above award of this Tribunal was challenged by the workman by filing Writ Petition No. 233/98 before the Hon. High Court of Bombay at Goa. The Hon'ble High Court held that this Tribunal had erred in holding that the order dated 25th September, 1985 passed in approval application filed by the employer u/s 33 (2) (b) of the Industrial Disputes Act, 1947 registered as IT/7/84 operates as res-judicata while deciding the issue Nos. 1 & 2 and therefore the order of this Tribunal dated 19th August, 1992 in respect of the preliminary issue holding that the order of the Tribunal while deciding the application u/s 33 (2) (b) of the Industrial Disputes Act, operates as res-judicata is unsustainable under law. The Hon'ble High Court held that while adjudicating upon the dispute the Tribunal ought to have decided all the issues particularly issue Nos. 1 & 2 dehors the order of the Tribunal while deciding the application u/s 33(2) (b) of the Industrial Disputes Act, 1947. The Hon'ble High Court therefore by oral judgment dated 29th November, 2002 quashed and set aside the award of this Tribunal dated 20th October, 1997 and remitted the matter to this tribunal to decide all the issues afresh.

7. After the matter was remanded, notices were issued to the parties and in pursuance to the said notice parties appeared before this Tribunal. The parties submitted that the issue No. 3 which is pertaining to the proving of misconduct against the workman in the enquiry conducted against him is not properly framed and therefore with the consent of the parties the issue No. 3 was re-framed as follows on 23-1-2003.

Issue No. 3: Whether the charges of misconduct levelled against the Party I/Workman are proved to the satisfaction of this Tribunal by acceptable evidence?

8. Thereafter the workman as well as the employer were given opportunity to lead evidence on preliminary issue Nos. 1, 2 and 3. Accordingly, both the parties led

evidence on the said issues. After hearing the parties, this Tribunal by findings dated 24-4-2003 held that the enquiry conducted against the workman was fair, proper and impartial and it was also held that the charges of misconduct levelled against the workman in the charge sheet dated 8-3-1993 were proved. Thus the preliminary issue Nos. 1, 2 and 3 stand disposed of.

9. My findings on the following remaining issues are as follows:

Issue No. 4 : In the affirmative.
Issue No. 5 : In the affirmative.
Issue No. 6 : In the negative.
Issue No. 7 : In the affirmative
Issue No. 8 : Workman is not entitled to any relief.

REASONS

Before deciding the issue Nos. 4 and 7 which are relating to justification of the action of the employer in terminating the services of the workman, in my view it would be proper to decide the issue Nos. 5 and 6.

10. *Issue No. 5:* It is not in dispute that the employer had filed an application under Sec. 33(2)(b) of the Industrial Disputes Act, 1947 for the approval of the action taken in dismissing the workman from service. The said application was registered as application No. IT/7/84 and the records of the said proceedings have been produced in the above proceedings. The said records show that this Tribunal had held that the employer has made out a prima facie case for the dismissal of the workman and therefore the approval was granted. This being the case I answer the issue No. 5 in the affirmative.

11. *Issue No. 6:* This Tribunal by order dated 19-8-92 had held that the findings given in regard to the fairness and legality of the domestic enquiry in case No. IT/7/84 operated as res-judicata in these proceedings and hence answered the issue No. 6 in the affirmative. The Award dated 20-10-97 passed by this Tribunal in these proceedings was challenged by the workman before the Hon'ble High Court of Bombay at Panaji in Writ Petition No. 233/98. The Hon'ble High Court in its judgment dated 29th November, 2002 held that the findings given by the Tribunal in regard to the fairness and legality of the enquiry in the approval application filed under Sec. 33(2)(b) of the Industrial Disputes Act, 1947 registered as IT/7/84 do not operate as res-judicata and further held that the order of this Tribunal dated 19-8-92 is unsustainable under the law. The Hon'ble High Court set aside the Award and remitted the matter to this Tribunal with a direction to decide all the issues afresh. Since the Hon'ble High Court has already held that findings given in case No. IT/7/84 in regard to the fairness and legality of the domestic enquiry do not operate as resjudicata, this issue is liable to be answered in the negative. I, therefore answer the issue No. 6 in the negative.

12. *Issue Nos. 4 and 7:* While deciding the issue No. 3 it has been held by me that the charges of misconduct levelled against the workman in the charge sheet dated 8-3-1983 are proved. The charges which are held to be proved against the workman are that he and some other workers gheraoed the co-worker Shri John Menezes on 26-2-83 at about 7.50 a.m. and he assaulted him by giving blows on his stomach. This incident had taken place near the machine shop when Mr. John Menezes was going to the Jetty. Shri Subhas Naik, representing the workman submitted that the punishment of dismissal from service awarded to the workman is too harsh and it is disproportionate to the misconduct alleged to be proved against the workman. He submitted that the incident was a minor incident for which the punishment of giving warning as given to the other workers would have been justified. He submitted that the past service record of the workman was clean and he had worked for 21 years. He submitted that the charge sheets produced by the employer cannot be considered for the purpose of past service records of the workman because mere issuing of the charge sheet does not mean that the workman had committed the acts. He submitted that the misconducts alleged in the charge sheets were not proved in the enquiry. He submitted that the warning letter dated 20-1-98 cannot be considered because it was not exhibited in the proceedings. He also submitted that there is discrimination on the part of the employer in awarding punishment to the workman. He submitted that though charges were proved against Mr. Puti Gaonkar and Shri Shailesh Borkar in the findings dated 20-1-84, they were let off by issuing only warning letters to them. He submitted that though enquiry was conducted against other workers no action was taken against them. He submitted that the above acts on the part of the employer amount to discrimination. On the point of punishment Shri Subhas Naik relied upon the judgment of the Bombay High Court in the case of Bajaj Auto Consumer's Co-operative Society Ltd.., Pune v/s Uttam Dnyanoba Tajane and other (1998(1)Bom.LC 320) reported in 1998 (1) Bom. LC 320 and in the case of Mahindra & Mahindra Ltd., v/s Shri B.B. Narawade and others reported in Appeal No. 419 of 2002. In Writ Petition No. 952 of 2002 (copy of the judgment supplied by the workman) Adv. Shri M. S. Bandodkar representing the employer submitted on the other hand that the incident of gherao and assault had taken place within the premises of the employer. He submitted that the incident of gherao and assault was as a result of rivalry within the two unions and for the same the employer, which is a defence undertaking should not be penalized. He submitted that the workman has admitted in his evidence that he had received the charge sheets issued to him as also the caution letter and the warning letter dated 20-1-78. He submitted that the above documents prove that the past service records of the workmen were not good as regards the punishment awarded to Shri Puti Gaonkar and Shri Shailesh Borkar, he submitted that there is no discrimination because as against them the charge of result was not proved, and therefore different punishment was awarded to them. He

submitted that the punishment awarded by the employer should not be interfered with unless the punishment awarded is shockingly disproportionate which he submitted is not the case in the present case. In support of his this contention he relied upon the judgment of the Supreme Court in the case of State Bank of India v/s Tarunkumar Banerjee and others reported in 2000 (87) FLR 322.

13. The contention of the workman is that the action of the employer in terminating his service is not legal and justified whereas the contention of the employer is that its action is legal and justified. The question is whether the Tribunal has powers and jurisdiction to interfere with the punishment awarded by the employer. The Supreme Court in the case of Ramakant Mishra v/s State of Uttar Pradesh and others reported in 1983 SCC (L & S) 23 has held that the Labour Court or the Tribunal has jurisdiction and power under Sec. 11A of the Industrial Disputes Act, 1947 to substitute its measures of punishment in place of that awarded by the employer once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. This means that after the introduction of Sec. 11A, the Tribunal has the powers to interfere with the punishment awarded by the employer and award lesser punishment in a given case. The Bombay High Court in the case of Basu Deba Das v/s M.R. Bhope reported in 1993 II CLR 239 in para 34 of its judgment has held that whether a particular misconduct is severe or otherwise would depend upon the facts of each particular case and no hard and fast rule can be laid down to gauge the serenity or the triviality of the misconduct. The High Court held that a misconduct which may not be viewed, in certain circumstances, to be serious but it can be serious in another set of circumstances and that a code of conduct which is expected of a workman varies from place to place. Adv. Shri Bandodkar, representing the employer has relied upon the judgment of the Supreme Court in the case of State Bank of India (supra). In this case the Supreme Court has held that once the Tribunal finds that the domestic enquiry was fair and valid, the scope of interference was limited. The Supreme Court referred to its earlier decision in the case of workmen of Messrs Firestone Tyre and Rubber Company of India (P) Ltd., v/s Management and others reported in 1973 (26) FLR 359 and stated that the correct law on the point is laid down in this case. In this case the Supreme Court has held that when a proper enquiry has been held by an employer and the findings of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body and that decision of the employer as an appellate body and that the interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or malafides. In the case of New Sharrock Mills v/s Mahesbhai T. Rao, reported in 1997 I CLR 13, the Supreme Court held that the Labour Court ought not to have interfered with the punishment awarded after having come to the conclusion that the findings of the departmental enquiry was legal and proper, the discharge order was not by way of victimisation and that the respondent workman had seriously misbehaved and thus was guilty of misconduct. The Supreme Court held that it was not a case where the court could come to the conclusion that the punishment was shockingly disproportionate to the employee's conduct and his past record. The Supreme Court held that the Labour Court completely overlooked the fact that even prior to the incident in question, the respondent had misconducted himself on several occasions and had been punished.

14. Shri Subhas Naik, representing the workman has relied upon the judgments of the Bombay High Court in the case of Mahindra & Mahindra Ltd., (supra) and in the case of Bajaj Auto Consumers Coop. Society Ltd., (supra). In the case of Mahindra and Mahindra Ltd., (supra) the Bombay High Court held that though the workman was found guilty of the misconduct of using foul, intemperate and abusive language, it was not sufficient to warrant the punishment of dismissal from service. The High Court held that even taking into consideration the past service record of the workman dismissal would not be a proper punishment and that the fact or that the workman was in service for fifteen years prior to his dismissal should also be borne in mind while imposing punishment. In the case of Bajaj Auto Consumers Coop. Society Ltd., (supra) the misconduct alleged against the employer was of assaulting a co-worker at the place of work. The High Court held that if a workman or employee is found to be guilty of evidence misconduct and if such a workman is reinstated in service, it will definitely have an adverse effect on the discipline that the employer is required to maintain amongst his employees. The High Court held that interest of justice will be served by directing the respondent to pay 50% of the back wages to the employee. In the case of Inspecting Assistant Commissioner, Bombay, and others v/s Sharat Narayan Parab reported in 1998 I CLR 186, the Supreme Court held that unless the punishment imposed is such that no reasonable person could ever have imposed such a punishment looking to the circumstances of the case, the punishment imposed by the employer should not be interfered with. However, in the case of Municipal Corporation of Greater Bombay v/s S.E. Phadtare & Others reported in 1994 I CLR 301, the Bombay High Court held that the dismissal of the workman who was the office bearer of the union was proper because he was instigating the workers to resort to violence and was pelting stones. The High Court in para 16 of the its judgment observed as follows:

> "There is growing indiscipline amongst the workers controlled by the union and resort to violence is common. The workers controlled by some of the unions are under the impression that even if they indulge in violent activities and damage public property, courts will come to their rescue and permit them to continue their nefarious activities, such impression cannot be permitted to go around. High Court always takes liberal view

when the interest of employees are involved but the beneficiary legislation cannot be allowed to stretch to such an extent as to make the mockery of discipline."

In view of the above judgments the law that is laid down is that whether the punishment awarded is justified or not would depend upon amongst other things, the nature of the misconduct committed by the workman, the place where it is committed, the circumstances under which it was committed and his past service record.

15. In the present case the workman was employed with Goa Shipyard Ltd., which is a defence of India Undertaking who constructs Naval Ships, Vessels, required for the defence of the country besides, constructing barges, trawlers etc. It is an admitted fact that at the time when the incident of assault had taken place there were two unions which were functioning in the establishment of the employer. The union to whom the workman belonged had come into existence subsequently. Even if it is assumed that the workman was assaulted and injured by the members of the other union, it will not absolve the workman of the offence which he had committed nor it will make the offence less serious. Both the incidents had taken place within the premises on the same day. Shri John Menezes was gheraoed and assaulted by the workman before 8 a.m., whereas the alleged incident of assault on the workman had taken place after 8 a.m. The reasonable conclusion is that the alleged incident of assault on the workman must have been the direct result of assault on Shri John Menezes by the workman and his supporters. The workman in his evidence has stated that earlier he was the member of Shipyard Employees Union in the year 1978 and that he left the said union on 16-3-1982 alongwith another 10 workers. He has stated that he left the union because some problems could not be solved by the said union. He has stated that he and the other workers who had left Shipyard Employees Union formed another union by name Goa Shipyard Employees Union and that the relations between the two unions were not good. The incident of assault on Shri John Menezes, the member of the other union, that is, Shipyard Employees Union was a result of the rivalry between the two unions. Though giving of slaps and punches on the body of Shri John Menezes had not resulted in visible or bleeding injuries, still this fact amounts to assault. Place of work is not a place where the workers should settle their differences by resorting to violence. These type of acts adversely affect the discipline among the workers. Moreover, the workman was the Vice President of the Goa Shipyard Union, which was the rival union founded by him and therefore he being the office bearer of the union all the more he should have been that the discipline is maintained by the workers in the establishment. On the contrary he himself had tried to set up an example of indiscipline by resorting to violence. The observations made by the Bombay High Court in the case of Municipal Corporation of Greater Bombay (supra) which have been quoted by me earlier squarely apply to the present case. Hence, in my judgment the misconduct committed by the workman is a serious one and it is an act subversive of discipline and good behaviour, for which lenient view cannot be taken.

16. The employer has led evidence on the past record of the workman. The workman has admitted in his cross examination that he was given chargesheets dated 31-5-67, 3-1-77 and 3-1-81. The said chargesheets have been produced at Exbs. 21, and 22 respectively. He has further admitted that he was given a caution letter dated 13-8-82 Exb. 23 and a warning letter dated 20-1-78. In the charge sheet dated 31-5-67, it is alleged against the workman that he was found sleeping at midnight while on duty. In the chargesheet dated 3-1-77 Exb. 21, it is alleged that on 1-1-77 the workman attempted to assault the security hawaldar on duty when he stopped some workmen who were taking out helmet given to them for use while on duty, and that he also invited the workmen to leave the shipyard by force. This allegation is a serious allegation. In the charge sheet dated 3-0-1981 Exb. 22, several charges of misconduct have been levelled against the workman namely that of leaving his place of work and going around the Yard alongwith other workers from New Construction Department stopping the workers from doing their work on 25-8-81, leaving his place of work on 27-8-81 about 9.20 hours alongwith other workers, going to the vicinity of the classrooms of GSL Apprentice School, creating commotion in the premises of the said school in an indisciplined and disorderly manner, confronting Dy. Superintendent Incharge of Apprentice school and demanding the abandonment of Apprentice Entry examination which was scheduled to take place at 9.30 hours and thus preventing the conducting of the said examination; leaving his place of work on 27-8-81 alongwith other workers from New Construction Department and going around the yard intimidating the structural fitters and welders and stopping them from discharging their normal duties; leaving his place of work alongwith other workers on 1-9-81 at 9.20 hours and going to the GSL Apprentice School and forcibly interrupting the training of Marine Fitter (General) Trainees, making them to collect their tokens and lead them to the New Construction Department and other officers demanding the deployment of those trainees as helpers of Tradesman when he had no authority nor instructions from the management to do so and lastly, leaving the place of work on 1-9-81 at about 10.00 hours alongwith the other workers from New Construction Dept., to the Yard and stopping the workers from doing their normal activities thereby bringing the working of the entire yard to a stand still. These charges levelled against the workman are also of a serious nature. From all the three charge sheets it can be seen that the allegation was that the workman was involved in the act of high handed behaviour, spoiling the discipline in the establishment and affecting the normal work of the Yard. The workman has also admitted the issuing of a warning and caution letter to him. The workman in his re-examination has stated that in respect of the above charge sheets issued to him, inquiries were held, but findings were not

recorded. The outcome of the inquiries is not on record. However, the fact remains that charge sheets were issued to the workman as regards the misconducts alleged to have been committed by him and also warning and caution letter was given to him. There is nothing on record to show that the workman at any time challenged the warning letters or the caution letter issued to him or that he reacted to the said warning letters and caution letter in any manner. The evidence therefore, establishes that the past conduct of the workman was not good and satisfactory. Besides, the Bombay High Court in the case of Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Limited reported in 1980 I LLJ 295 has held that it cannot be said that disciplinary proceedings for misconduct can never be taken against an employee on a charge of insubordination arising out of solitary instance of a lawful order and that for sustaining such a charge of insubordination several repeated instances of disobedience are necessary. It therefore follows that to punish an employee one solitary instance of misconduct is enough.

17. Shri Subhas Naik, representing the workman has submitted that the act of the employer in dismissing the workman from service is discriminatory. He has contended that in respect of the assault on the workman by the members of the other union namely Shri Puti Gaonkar and his supporters, 11 workers including Shri Puti Gaonkar were charge sheeted and enquiry was held and though some were held as guilty, they were not dismissed from service. The workman has produced the records of the enquiry in respect of the said 11 workers at Exb. 17 colly. I have gone through the said enquiry records. The said records show that out of the 11 workers, 2 workers were held guilty of the charges of misconducts and they were Shri Puti Gaonkar and Shri Shailesh Borkar. The other workers were not held guilty of the charges and were exonerated. Assuming that the services of the said 2 workers namely Shri Puti Gaonkar and Shri Shailesh Borkar were not terminated, it does not mean that the services of the workman also should not have been terminated. To hold that there is descrimination, the set of circumstances in the case of the workman and in the case of the said two workers whose services were not terminated should be the same or similar. The inquiry records in respect of the said two workers produced at Exb. 17 colly show that the set of circumstances are not the same or similar. The workman was charge sheeted for gheraoing and assaulting Shri John Menezes. In the enquiry, he was held guilty of both the charges and consequently, was held guilty of misconduct under clause 29(xi), (xii), (xiii) and (xxxvii) of the Certified Standing Orders of the Employer, whereas, Shri Shailesh Borkar was held guilty of only gheraoing the workman and was not held guilty of assaulting the workman. Shri Shailesh Borkar was held guilty of misconduct under clause 29(xi) and (xii) of the Certified Standing Orders. Similarly, Shri Puti Gaonkar was held guilty of leading a group workmen with the intention to beat the workman. He was not held guilty of assaulting or beating the workman and consequently, he was held guilty of misconduct under clause 29(xi) and (xii) of the Certified Standing Orders. Besides, the past record of the workman which is on record shows that earlier, he had tried to assault a Security Hawaldar; instigated other workers to leave their place of work; he was forcing the workers to stop their work; he stopped the conducting of entry exam for the trainee apprentices and thus, the workman was responsible for spoiling the discipline in the establishment of the employer and affecting the normal work in the year. There is no evidence on record to show that the past record of the said 2 workmen namely Shri Puti Gaonkar and Shri Shailesh Borkar was bad or unsatisfactory. Therefore, the case of the workman cannot be equated with the case of the said two workers whose services were not terminated to say that there is descrimination. Hence, considering all the above factors, I am of the view that the employer is justified in terminating the services of the workman and there is no reason to interfere in the punishment awarded to the workman because indiscipline of the kind with which the workman is involved is to be viewed seriously as otherwise, the same would affect the smooth functioning of the Yard and also adversely affect the discipline amongst the workers as it would be presumed that even if one indulges in violent and indiscipline activities, the Court would come to his rescue and he would escape with some minor punishment. I therefore, hold that the order of termination of the services of the workman is legal and justified. I therefore answer the issue Nos. 4 and 7 in the affirmative.

18. *Issue No. 8:* This issue pertains to the relief to which the workman is entitled to. It has been held by me that the action of the employer in terminating the services of the workman with effect from 16-2-1984 is legal and justified. In the circumstances the workman is not entitled to any relief. I therefore hold that the workman is not entitled to any relief and hence I answer the issue No. 8 accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the employer of M/s. Goa Shipyard Limited, Vasco-da-Gama, Goa, in terminating the services of their Workman Shri Ramdas Borkar, Gas Cutter with effect from 16-2-1984 is legal and justified. I hereby further hold that the workman, Shri Ramdas Borkar is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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